

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMMY CAHN, JAC MUSIC CO., INC.,
FORT KNOX MUSIC, INC., TRIO
MUSIC CO., INC. and PEER
INTERNATIONAL CORPORATION,

Plaintiffs,

- against -

SONY CORPORATION, SONY USA INC.
and SONY CORPORATION OF AMERICA,

Defendants.

90 CIV. 4537

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: 90 Civ. _____

COMPLAINT - CLASS ACTION

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Plaintiffs, by their attorneys, Kramer, Levin & Nessen,
Kamin & Frankel, for their complaint allege as follows:

1. Plaintiffs, on their own behalf and on behalf of
the class described below, bring this action seeking declaratory
and injunctive relief against the named manufacturers, importers
and/or distributors of digital audio tape ("DAT") recorders and
blank DAT cassettes. By introducing DAT recorders and blank DAT
cassettes into the consumer marketplace in the United States,
defendants are inaugurating a new era in unauthorized home taping
of copyrighted musical compositions. For the first time, a home
taper will be able to make perfect copies of vinyl records, pre-
recorded cassettes and -- most critical -- compact discs.
Indeed, DAT recorders are primarily intended for unauthorized
home taping, and defendants are actively promoting the ability of
DAT recorders to make perfect digital copies of compact discs.

This message has not been lost on prospective purchasers: a recent survey by The Roper Organization confirms that virtually every person who is interested in purchasing a DAT recorder and using its recording capability intends to tape pre-recorded music.

2. The threatened harm is immediate and profound. Copyright protection, under the Constitution, promotes creativity by providing a financial incentive -- and the financial ability -- to create new works. Unauthorized taping on DAT recorders will undermine this scheme. It displaces sales of records, pre-recorded cassettes and especially compact discs, and each lost sale results in the loss of the mechanical royalties to which members of the class are entitled under copyright law. But members of the plaintiff class will only be the first to suffer through this erosion of their rights; in the end the public will be greatly harmed by an inevitable reduction in the creation of new songs.

3. Plaintiffs, accordingly, seek an urgently needed declaration that a) unauthorized home audio taping of their copyrighted musical compositions on DAT recorders is an infringement of their copyrights in the musical compositions under the Copyright Act of 1976, 17 U.S.C. § 101 et seq. (the "Act") and b) defendants are or will be liable for contributory infringement through their provision to consumers in the United States of DAT recorders and/or blank DAT cassettes designed and intended for

unauthorized taping of copyrighted musical compositions. Plaintiffs also seek injunctive relief prohibiting defendants from manufacturing, importing and distributing for sale to consumers in the United States DAT recorders and blank DAT cassettes because they are the means for unauthorized home taping of copyrighted musical compositions.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the action pursuant to 28 U.S.C. § 1338(a). Venue is proper under 28 U.S.C. §1400(a).

THE PARTIES

5. Sammy Cahn is a citizen of the State of California and is a professional songwriter. He wrote the lyrics for, among many other well-known songs, "High Hopes", "Love and Marriage", "Come Fly With Me", "The Second Time Around" and "It's Magic". Cahn also does business as a music publisher under the name of Cahn Music Company ("Cahn Music"), through which he is engaged in licensing the use of and otherwise exploiting a number of musical compositions as to which he is the co-author and co-copyright owner. Among many others, Cahn is the co-copyright owner of the United States copyright in and to the musical composition "Three Coins In The Fountain" written and composed by Cahn (lyrics) and Jules Styne (music), both citizens of the United States, and with respect to which:

a. The composition was duly registered for copyright with the United States Copyright Office as a published work on March 19, 1954 in the name of Robbins Music Corporation, and the Register of Copyright issued to Robbins Music Corporation a Certificate of Copyright Registration therefor bearing Registration No. EP 79076;

b. On January 8, 1982 the copyright in the composition was duly renewed upon the filing of a renewal application in the names of Cahn and Styne (as co-authors), whereupon the Register of Copyrights issued a Certificate of Copyright Renewal bearing No. RE 116650; and

c. Cahn has duly complied with all relevant provisions of the Act and all laws governing copyright with respect to the composition.

6. Jac Music Co., Inc. ("Jac"), a New York corporation with offices in Los Angeles, California, is a music publisher engaged in the business of licensing the use of and otherwise exploiting musical compositions. Jac is the co-copyright owner of the United States copyright in and to the musical composition "What The World Needs Now Is Love" written and composed by Hal David and Bert Bacharach, both citizens of the United States, and with respect to which:

a. The composition was duly registered for copyright with the United States Copyright Office on July 16,

1965 and the Register of Copyrights issued to Jac (and to the co-owner) a Certificate of Registration bearing Registration No. EP 204882; and

b. Jac has duly compiled with all relevant provisions of the Act and all laws governing copyright with respect to the composition.

David, the president and principal stockholder of Jac, is the co-author of many other well known songs, including "Alfie," "Raindrops Keep Fallin' on My Head," "To All the Girls I've Loved Before," "Promises, Promises" and "Do You Know The Way to San Jose?"

7. Fort Knox Music, Inc. ("Fort Knox") is a New York corporation with offices in New York, New York. Trio Music Co., Inc. ("Trio") is a New York corporation with offices in Los Angeles, California. Fort Knox and Trio are music publishers engaged in the business of licensing the use of and otherwise exploiting musical compositions. They are the joint owners of the copyright in the musical composition "Fever" written and composed by John Davenport and Eddie Cooley, both citizens of the United States, and with respect to which:

a. The composition was published with Notice of Copyright on March 14, 1956 by Jay & Cee Music Corporation ("Jay & Cee"), which received from the Register of Copyrights a Certificate of Registration bearing No. EP 97666;

b. By written agreement dated December 9, 1955, John Davenport and Eddie Cooley transferred the original and renewal term U.S. copyright in and to the composition to Jay & Cee. This agreement and transfer has been delivered to the United States Copyright Office, for recordation with payment of the appropriate fee therefor on July 6, 1990;

c. By written transfer dated February 15, 1983 and duly recorded in the Copyright Office on May 16, 1983 at Volume 2004, Pages 606, et seq., Jay & Cee transferred its rights in and to said composition to Fort Knox Music Company, a joint venture consisting of F & B Music, Inc. and Trio Music Co., Inc. On June 20, 1983, by Certificate of Amendment duly filed with the Secretary of State of the State of New York, F & B Music, Inc. amended its Certificate of Incorporation to change its name from F & B Music, Inc. to Fort Knox Music, Inc.;

d. On April 9, 1984, the copyright in the composition was duly renewed upon the filing of a renewal application in the names of John Davenport and Eddie Cooley (as co-authors), whereupon the Register of Copyrights issued a certificate of renewal registration identified as RE 207-287; and

e. Fort Knox and Trio have duly complied with all relevant provisions of the Act and all laws governing copyright with respect to the composition.

8. Peer International Corporation ("Peer"), a New Jersey corporation with offices in New York, New York, is a music publisher engaged in the business of licensing the use of and otherwise exploiting musical compositions. Peer is the sole and exclusive owner of the United States copyright in and to the musical composition "Walk Like An Egyptian" written and composed by Liam Sternberg, a citizen of the United States, and with respect to which:

a. The composition was duly registered for copyright with the United States Copyright Office on February 11, 1986 and the Register of Copyrights issued to Peer a Certificate of Registration bearing Registration No. PA 278841;

b. By written transfer of copyright dated July 10, 1984, Sternberg transferred to Peer all of his rights and copyrights in and to the composition, which transfer was duly recorded in the Copyright Office on February 10, 1986 in Volume 2172 at Page 487; and

c. Peer has duly complied with all relevant provisions of the Act and all laws governing copyright with respect to the composition.

9. Upon information and belief, Sony Corporation is a Japanese corporation and is the parent of Sony USA Inc. ("Sony USA"), a New York corporation with offices in New York, New York. Upon information and belief, Sony USA is the parent of Sony

Corporation of America ("Sony-America"), a Delaware corporation with offices in New York, New York. Upon information and belief, Sony Audio Component Systems Co. and Sony Magnetic Products Co. are divisions of Sony-America. Upon information and belief, defendants manufacture, import and distribute for sale in this District and elsewhere in the United States consumer electronic products. Upon information and belief, these defendants are, or shortly will be, manufacturing, importing and distributing DAT recorders and blank DAT cassettes for sale to consumers in the United States.

CLASS ACTION ALLEGATIONS

10. Plaintiffs bring this action on their own behalf and as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all owners of copyrights in musical compositions, and all transferees of the exclusive rights to authorize the making of sound recordings and the distribution of phonorecords, who are entitled to receive mechanical royalties from record companies licensed by The Harry Fox Agency, Inc. ("Fox") on behalf of its publisher clients.

11. This action is properly maintainable as a class action pursuant to Fed. R. Civ. P. 23(a), 23(b)(1)(B) and 23(b)(2).

12. The class is so numerous that joinder of all members is impracticable. There are approximately 40,000 members

of the class located throughout the United States, holding in the aggregate over 450,000 copyrights.

13. There are questions of law and fact which are common to the class and which predominate over questions affecting any individual class members. The common questions include, inter alia, the following:

(a) Does home taping of copyrighted musical compositions on DAT recorders constitute an infringement of the rights of the copyright owners under § 106 of the Act?

(b) Are DAT recorders designed and intended for home copying of copyrighted musical compositions?

(c) Are defendants liable for contributory infringement arising from home taping?

(d) Will plaintiffs and the other members of the class be irreparably damaged unless the Court enjoins the sale and distribution of DAT recorders and blank DAT cassettes?

14. The claims of plaintiffs are typical of the claims of the other members of the class, and plaintiffs have the same interests as the other members of the class.

15. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. Plaintiffs are adequate representatives

of the class and will fairly and adequately protect the interests of the class.

16. Plaintiffs anticipate that there will not be any difficulty in the management of this action, in which only declaratory and injunctive relief is being sought.

17. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, and the requirements of Fed. R. Civ. P. 23 are satisfied.

BACKGROUND ALLEGATIONS

A. Mechanical Rights

18. A major source of income for the plaintiff class under the Act is the payment of royalties due upon the distribution of phonorecords of musical compositions. The right to such payments is generally referred to as the "mechanical right," and the payments as "mechanical royalties."

19. The mechanical right was originally created by the Copyright Act of 1909 (the predecessor of the Act). That statute gave owners of copyrighted music the exclusive control over reproduction of their works by recording or other mechanical means, subject to a "compulsory license."

20. In the terminology of the Act, "sound recordings" are "works that result from the fixation of a series of musical, spoken or other sounds, but not including the sounds accompanying

a motion picture or other audiovisual work . . .," 17 U.S.C. § 101 -- that is, versions or renditions of musical compositions. Sound recordings are copyrightable, separate from the underlying musical compositions. "Phonorecords" is the term used in the Act for the material objects in which sound recordings are fixed and includes vinyl records, pre-recorded cassettes and compact discs.

21. Under § 115 of the Act, once phonorecords of a sound recording of a musical composition have been publicly distributed in the United States with the consent of the copyright owner, anyone else may -- under the conditions of § 115 -- make and distribute phonorecords of a new sound recording of the copyrighted musical composition without express permission from the copyright owner. In particular, the section provides for payment of a royalty to the copyright owner for each phonorecord made and distributed under the compulsory license. The amount of the royalty is set from time to time by the Copyright Royalty Tribunal; currently, the royalty amount on each phonorecord sold on or after January 1, 1990 is the greater of 5.7 cents for each copyrighted work or 1.1 cent per minute of playing time.

22. The Act includes detailed procedures for seeking a compulsory license and for paying the mechanical royalties. In common practice Fox, as licensing and collection agent for its music publisher clients, grants licenses directly to record companies pursuant to the statutory provisions, with some agreed-to modifications by publishers on an individual basis. Cur-

rently, Fox represents some 7,500 publishers. Under the form of statutory license issued by Fox, record companies must account for, and pay, mechanical royalties based upon all phonorecords manufactured and distributed. Fox, in turn, remits the royalties to the publishers. Royalties are shared by music publishers and songwriters pursuant to the terms of the grants conveying rights in the songwriters' musical compositions to the publishers, who promote the compositions. Typically, songwriters receive 50% or more of these royalties under the controlling grants.

23. The more popular songs are recorded multiple times by different performers, under separate licenses. For example, since 1984 Fox has issued over 40 licenses for different phonorecords of both "Fever" and "Three Coins in the Fountain." Certain versions of these songs, as well as "What the World Needs Now Is Love" and "Walk Like an Egyptian," are available in vinyl record, pre-recorded cassette and compact disc formats.

24. While the royalty received by the copyright owners under the mechanical right is only a few cents per phonorecord, the amount of royalties from the numerous sound recordings of a song add up to substantial amounts, and these royalties represent a critical portion of the earnings of songwriters and music publishers. By way of illustration, the royalties collected in 1989 on recordings of "Fever" were \$21,896; of "Walk Like an Egyptian," \$91,338; and of "Three Coins in the Fountain" (first

published in 1954), \$6,423. In the aggregate, Fox collected over \$170 million in mechanical royalties last year.

25. Mechanical royalties depend on an accurate count of sales. If sales are lost, revenues are lost. For each phonorecord that is not sold, songwriters and music publishers lose revenues.

B. Unauthorized Home Taping

26. By permitting persons to obtain copies of sound recordings of copyrighted musical compositions without purchasing phonorecords, the practice of unauthorized home audio taping strikes at the core of the royalty structure. Every copy made at home that substitutes for a purchased phonorecord results in a loss of mechanical royalties for the songwriter and the music publisher.

27. Unauthorized taping is not an isolated occurrence; on the contrary, it has become widespread. What it entails is the reproduction on home audio equipment of the sound recording of one or more musical compositions. All that is required is a tape recorder that can be attached to a playback source. For example, if a phonograph, compact disc player, FM/AM radio tuner and tape recorder are connected through an amplifier, the tape recorder can make copies from any of these sources -- that is, a vinyl record (played on the phonograph), a compact disc (played on the compact disc player), a pre-recorded cassette (played on

one well, if the tape deck is a dual-well machine), or a radio broadcast (recorded off-the-air). Recordings can also be made on many models of portable stereo units ("boom boxes") or personal stereo units ("walkman").

28. The technology of tape recorders currently in widespread use is generally described as "analog"; this involves transcribing on the tape physical or electrical marks in a continuous range of frequencies. Copies of sound recordings made on analog tape -- and, even more, copies of copies -- lose in sound quality through the process of copying. This is especially true when compact discs are copied. Compact discs are "digitally" recorded -- that is, by a transcription of a series of on/off pulses which represent binary numbers (zeros and ones) like those used in a computer -- and their sound is frequently described as perfect or flawless. An analog copy of a digital compact disc is of substantially diminished sound fidelity, and analog copies of analog sources are even more substantially diminished.

29. Despite the flaws in reproduction, unauthorized taping occurs today for several different uses. Some tapers want extra copies of a particular sound recording -- so they can have an extra copy for their car, their walkman or their second residence. Rather than purchase an extra copy of the sound recording in pre-recorded cassette format, the taper buys one copy for home use (in whatever format) and reproduces the desired extras for

convenience -- a self-help "buy one-get one free" scheme. In other cases, a taper makes copies to give to, or trade with, friends. This practice is especially prevalent among students. Tapers also record sound recordings off-the-air, to add them to their audio libraries -- often then making extra copies for their convenience, without having ever purchased an initial copy. Tapers also make composite tapes, including selections of their own choosing, and make these tapes part of their permanent collections.

30. Home taping results in lost potential sales of phonorecords -- and with it, lost royalties for the songwriter and music publisher. In the last year alone, it is estimated that over one billion infringing tapes were made in the U.S., including 500 million tapes of complete albums.

31. Not only do songwriters and music publishers suffer due to unauthorized taping; the practice harms the public. The creation of new musical compositions requires active stimulation and sustenance. Due to lost revenues, songwriters are less able to devote themselves to songwriting. In the same way, publishers are less able to promote musical compositions and to provide financial support to unestablished songwriters. The consequence is a smaller number of new musical compositions.

32. Despite this loss of revenues, it would be impractical to attempt to stop home taping on equipment already owned by consumers, and this action does not attempt to do so.

This action, instead, is addressed to the new equipment that defendants are now introducing onto the market, and it is brought only against companies that directly profit from the practice of home taping.

C. DAT Recorders

33. DAT recorders afford an entirely new opportunity and incentive for unauthorized taping and virtually all purchasers will use them to copy pre-recorded copyrighted music. Because of the digital process -- instead of analog -- DAT recorders enable a taper for the first time to make unauthorized perfect copies. Their use will be most significant with compact discs, for DAT recorders can make "digital clones" -- that is, tapes of a sound fidelity equal to the sound quality of compact discs. In addition, a DAT recorder can also copy from analog sources with virtually no loss of sound quality in the copying process.

34. DAT recorders have been designed for and are intended for the purpose of copying compact discs. Even if DAT recorders have a playback capability, there is virtually no available pre-recorded DAT programming so that purchasers will not be using DAT recorders to play pre-recorded DAT cassettes. Defendants know and expect that consumers will instead purchase DAT recorders in order to make perfect copies of pre-recorded compact discs, vinyl records and analog cassettes, and defendants

are actively promoting such use both through their own advertisements and through the Home Recording Rights Coalition.

35. Up until now, defendants and the other manufacturers of electronic equipment did not manufacture, import or distribute DAT recorders for home use in the United States. Some models of DAT recorders have been sold in the United States for professional recording uses, and some consumer models have been imported into the United States through the "gray market" (that is, goods not intended by their manufacturers for the United States market). However, defendants -- holding themselves out as "The Leader in Digital Audio" -- have just introduced DAT recorders for consumer use in the United States.

36. The consumer models offered by defendants for sale in the United States are said to have a limitation on their copying capability. In particular, these DAT recorders are to be equipped with a Serial Copying Management System ("SCMS"), which defendants claim will prevent second generation copying. However -- even if the SCMS operates as represented and cannot be easily circumvented -- these machines will permit an unlimited number of unauthorized perfect copies to be made from the original compact disc or other source and an unlimited number of analog copies to be made from a DAT copy. Indeed, the inclusion of the SCMS confirms that defendants know and intend that DAT recorders will be used to copy pre-recorded music.

37. DAT recorders and blank DAT cassettes are being introduced at prices higher than analog recorders and tapes. As a result, the DAT recorders will be inappropriate for tape recorder uses that do not require the high-fidelity capability of DAT recorders -- such as dictation or telephone answering machines. Instead, they will be used for high fidelity copying of musical compositions.

38. The imminent threat to the plaintiff class is severe, because the compact disc is an increasingly popular format of pre-recorded music and taping on DAT recorders is certain to displace sales of compact discs.

Count I

39. Plaintiffs repeat and reallege the allegations of paragraph 1 through 38, above.

40. This claim is brought pursuant to the Act and to 28 U.S.C. § 2201(a), seeking declaratory relief. There is an actual controversy between the plaintiff class and defendants.

41. Under § 106 of the Act, plaintiffs and the other members of the class have, with respect to each of their copyrighted musical compositions, "the exclusive rights to do and to authorize any of the following:

"(1) to reproduce the copyrighted work in copies and phonorecords;

"(2) to prepare derivative works based upon the copyrighted work;

"(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership. . . ."

42. Unauthorized taping of copyrighted musical compositions on DAT recorders constitutes an infringement of the exclusive rights under § 106 of the Act. Tapers are or will be, without authorization, copying the entirety of copyrighted works, resulting in the loss of substantial royalties for the members of the plaintiff class.

43. DAT recorders have been designed and are intended by defendants to enable copying of copyrighted musical compositions, especially sound recordings fixed in compact discs but also sound recordings fixed in vinyl records and pre-recorded cassette tapes or broadcast on the radio. The only plausible, overwhelmingly predominant use for DAT recorders is for infringing taping activities. Currently, there are virtually no pre-recorded DAT cassettes. Purchasers of DAT recorders are using them, or will use them, to copy the copyrighted musical compositions controlled by plaintiffs and by members of the plaintiff class. Defendants are manufacturing, importing and/or distributing DAT recorders in total disregard of the rights of the plaintiff class. Upon information and belief, the copyrights of plaintiffs and of members of the plaintiff class have been or

will be infringed through unauthorized taping on DAT recorders made available by defendants.

44. Upon information and belief, defendants are manufacturing, importing and/or distributing DAT recorders and blank DAT cassettes for sale in the United States for the purpose of inducing, causing, encouraging and enabling the purchasers thereof to copy, on DAT recorders, the copyrighted works of the members of the plaintiff class without the authorization of the owners of the copyrights. Upon information and belief, defendants know and intend that such purchasers will use DAT recorders and blank DAT cassettes for unauthorized audio taping.

45. Upon information and belief, defendants are manufacturing, importing and/or distributing DAT recorders and blank DAT cassettes for sale in the United States for the additional purposes of inducing, causing, encouraging and enabling purchasers thereof to build and maintain tape recordings of the copyrighted musical compositions of members of the plaintiff class, and to trade, lend, swap, and duplicate recordings of the copyrighted musical compositions of members of the plaintiff class. Upon information and belief, defendants know and intend that such purchasers will use DAT recorders and blank DAT cassettes for these stated uses.

46. By manufacturing, importing and/or distributing DAT recorders and/or blank DAT cassettes for sale to consumers in the United States, and by inducing, causing, encouraging and

enabling consumers to tape copyrighted musical compositions, defendants are or will be contributorily infringing the copyrights of plaintiffs and of the other members of the plaintiff class.

47. Defendants threaten to engage, or continue to engage, in the acts and conduct set forth above. As a direct and proximate result of the foregoing acts and conduct of defendants, plaintiffs have been, or are about to be, damaged due to a loss of mechanical royalties to which they are entitled under the Act.

48. By reason of the foregoing facts, an actual and justiciable controversy has arisen and now exists between plaintiffs and defendants concerning the rights of defendants under the Act, now and in the future, to manufacture and distribute DAT recorders and blank DAT cassettes for use in home audio taping. Specifically:

a) Plaintiffs contend that unauthorized audio taping on DAT recorders is an infringement under the Act and that defendants are, or will be, contributorily liable for this infringement; and

b) Upon information and belief, defendants deny and dispute plaintiffs' contentions.

49. By reason of the claims and contentions made and asserted by plaintiffs and defendants, it is necessary that the respective rights, duties and obligations of plaintiffs and

defendants with respect to the manufacture and distribution of DAT recorders and blank DAT cassettes be determined by the Court.

Count II

50. Plaintiffs repeat and reallege the allegations of paragraph 1 through 47, above.

51. Unauthorized taping of copyrighted musical compositions results in the loss of substantial mechanical royalties to which the members of the class are entitled under the Act.

52. As a practical matter, the plaintiff class cannot directly enforce its rights with respect to unauthorized taping.

53. The manufacture, importation and distribution of DAT recorders and blank DAT cassettes for sale to consumers in the United States has already begun to cause, or threatens shortly to cause, substantial losses for the members of the plaintiff class.

54. Plaintiffs have no adequate remedy at law.

55. Unless defendants are enjoined from manufacturing, importing and distributing DAT recorders and blank DAT cassettes for sale in the United States, the members of the plaintiff class will be irreparably injured.

WHEREFORE, plaintiffs pray for judgment and relief as follows:

A. On Count I, for a declaration in favor of the plaintiff class and against defendants that i) unauthorized home audio taping on DAT recorders of copyrighted musical compositions is an infringement of the copyrights in such compositions under the Act, and ii) defendants are or will be contributorily infringing the copyrights of the members of the plaintiff class through the manufacture, importation and distribution of DAT recorders and/or blank DAT cassettes for sale to consumers in the United States;

B. On Count II for injunctive relief enjoining defendants, and their respective agents, employees and all other persons acting under, in concert with or for them, from manufacturing, importing or distributing for sale to consumers in the United States DAT recorders and blank DAT cassettes that enable the unauthorized home taping of copyrighted musical compositions;

C. On both counts, for a direction that defendants pay the costs of this action, including reasonable attorneys' and expert witness' fees; and

D. On both counts, for such other and further relief
as the Court may deem just and proper.

July 9, 1990

KRAMER, LEVIN, NESSEN,
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